TABLE OF CONTENTS

Shrink Missouri Government PAC, a political action committee; W. Bevis Shock; Frederick T. Dyer v. John Maupin, in his official capacity as Chair of the Missouri Ethics Commission; Jeremiah W. Nixon, is his official capacity as Missouri Attorney General. United States Court of Appeals for the 8th Circuit, Case No. 95-2857, Opinion of the 8th Circuit A-1

Shrink Missouri Government PAC, et al. v. John Maupin, et al., United States District Court, Eastern District, Eastern Division, Case No. 4:95CV815 CDP, Memorandum and Order of the Eastern District A-17

Constitutional and Statutory Provisions A-41

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 95-2857

Shrink Missouri Government PAC, a political action committee; W. Bevis Shock; Frederick T. Dyer,	*	
Appellees,	*	
	*	Appeal from the United States District
	*	District Court for the
v.	*	Eastern District of
	*	Missouri.
John Maupin, in his official capacity as Chair of the Missouri Ethics Commission; Jeremiah W. Nixon, is his official capacity as Missouri Attorney General,	*	
Appellants.	*	

Submitted: September 13, 1995

Filed: December 19, 1995

Before BOWMAN, ROSS, and JOHN R. GIBSON, Circuit Judges.

BOWMAN, Circuit Judge.

Missouri's Campaign Finance Disclosure Law, Mo. Rev. Stat. Ch. 130 (1994), was amended twice in 1994. In July the state legislature adopted a measure commonly known as Senate Bill 650, and in November the citizens of Missouri adopted a ballot initiative commonly known as Proposition A. Both of these measures limit election campaign contributions and expenditures and thus tend to limit the free exercise of political speech that the First Amendment guarantees. W. Bevis Shock and Frederick T. Dyer, prospective candidates for public office, and Shrink Missouri Government PAC, a political action committee (PAC) planning to make campaign contributions in future elections, sought a permanent injunction against the implementation and enforcement of the following provisions of the amended Campaign Finance Disclosure Law: (1) the Proposition A limits on campaign contributions, Mo. Ann. Stat. § 130.100 (Vernon Supp. 1995), as applied to contributions by candidates to their own campaigns; (2) the limits on total expenditures by candidates, id. §§ 130.052, 130.053; (3) the restrictions on carrying over campaign funds from one election to another, id. § 130.130; and (4) the requirement that negative campaign advertisements state that they were approved and authorized by the candidate on whose behalf they were disseminated, id. § 130.031. On cross-motions for summary judgment, the District Court[1] held that each of these provisions violated the First Amendment rights of candidates and their contributors. The

---

[1]The Honorable Catherine D. Perry, United States District Judge for the Eastern District of Missouri.

court enjoined the Attorney General of Missouri and the Chair of the Missouri Ethics Commission (referred to herein jointly as "the state") from implementing, enforcing, or acting in reliance on the challenged provisions. Shrink Missouri Government PAC v. Maupin, 892 F. Supp. 1246 (E.D. Mo. 1995). The state now timely appeals.[2] After a de novo review of the District Court's judgment, see Maitland v. University of Minnesota, 43 F.3d 357, 360 (8th Cir. 1994), we conclude that the challenged provisions violate the First Amendment. We therefore affirm the well-reasoned decision of the District Court.

I.

As a preliminary matter, we must address the state's contention that summary judgment should not have been granted because genuine issues of material fact remain in dispute. See Fed. R. Civ. P. 56(c). The state did not make this contention in the District Court. Moreover, as the state notes, both sides agreed that the case could be decided on the cross motions for summary judgment. The state thus has waived this issue. See Empire State Bank v. Citizens State Bank, 932 F.2d 1250, 1253 (8th Cir. 1991). In any event, we are satisfied that no genuine issues of material fact remain in dispute.

II.

The State argues that the District Court erred when it (1) addressed the constitutionality of applying the Proposition A contribution limits to the candidates

---

[2]The state does not appeal the District Court's decision that the "approved and authorized" requirement of Mo. Ann. Stat. § 130.031 is unconstitutional, so that issue is not before us.

themselves because no Article III case or controversy existed between the parties with respect to that issue; (2) held that the state's "voluntary" expenditure limits scheme is unconstitutional; and (3) held that the restrictions on carrying over campaign funds from one election to another is unconstitutional. We will address each of these arguments in turn.

A.

The District Court held that the Proposition A campaign contribution limits are unconstitutional to the extent that they limit a candidates's ability to use his or her personal funds or property in support of the candidate's own campaign for public office. See Mo. Ann. Stat. § 130.100 (Vernon Supp. 1995) (limiting "contributions"); Mo. Rev. Stat. § 130.011(12)(a) (1994) (defining "contributions" to include a "candidate's own money"). The state argues that the District Court was without jurisdiction to consider this question, there being no Article III case or controversy because state officials have not threatened to prosecute candidates for making over-the-limit contributions to their own campaigns. We need not consider the jurisdictional point, however, because in a companion case this Court has held that the Proposition A contribution limits are unconstitutional on their face. Carver v. Nixon, No. 95-2608, slip op. at 25 (8th Cir. Dec. 19, 1995). Thus those limits necessarily are unconstitutional as applied to candidates as well as to other contributors.

B.

The District Court held that Senate Bill 650's "program of voluntary expenditure ceilings," State's Brief at 13, is coercive, restricts protected speech, and fails to pass constitutional muster under the strict scrutiny test.

Shrink Missouri Gov't PAC, 892 F. Supp. at 1252. The state argues that these voluntary spending limits are constitutional under Buckley v. Valeo, 424 U.S. 1 (1976) (per curiam), in which, inter alia, the Supreme Court struck down spending limits imposed by the Federal Election Campaign Act of 1971 as amended in 1974, 2 U.S.C. § 441a (1976).

The statute at issue in this case requires candidates for elected public office in Missouri to file an affidavit stating whether they will comply with spending limits that vary depending on the office sought. Mo. Ann. Stat. § 130.052.1 (Vernon Supp. 1995). The affidavit must be filed with the candidate's declaration of candidacy. Candidates who choose not to comply with the spending limits may accept contributions from individuals only and must refuse contributions from PACs, political parties, labor unions, corporations, etc. Id. § 130.052.3. Non-complying candidates also must submit daily disclosure reports once they exceed the spending limits. See id. § 130.052.3. No such restrictions or requirements are placed on candidates who swear to abide by the limits, though they are penalized if they spend more than the applicable limit, see id. § 130.053.1.

When considering whether a campaign finance law unconstitutionally infringes freedom of speech, this Court's task is to decide whether the provision in question actually "burdens the exercise of political speech and, if it does, whether it is narrowly tailored to serve a compelling state interest." Austin v. Michigan Chamber of Commerce, 494 U.S. 652, 657 (1990) (citing Buckley, 424 U.S. 1); see also Day v. Holahan, 34 F.3d 1356, 1361 (8th Cir. 1994), cert. denied, 115 S. Ct. 936 (1995).

Relying on a footnote in Buckley, the state argues that the expenditure limits are clearly constitutional regardless of the level of scrutiny applied because they are voluntary and merely provide an incentive for compliance. In Buckley, the Supreme Court held that limitations on the total expenditures by a candidate for federal office violated the First Amendment. 424 U.S. at 54-58. The Court nonetheless noted that

> Congress may engage in public financing of election campaigns and may condition acceptance of public funds on an agreement by the candidate to abide by specified expenditure limitations. Just as a candidate may voluntarily limit the size of the contributions he chooses to accept, he may decide to forgo private fundraising and accept public funding.

Id. at 57 n.65. The spending limits adopted by the Missouri legislature differ substantially from the scenario described in footnote 65 of Buckley and are thus distinguishable.[3]

---

[3]Because the Missouri expenditure limits are distinguishable from the scenario described in the Buckley footnote, we need not and do not address the difficult question of the extent of the state's power to condition the receipt of benefits on the renunciation of constitutionally protected rights. See Rust v. Sullivan, 500 U.S. 173, 197 (1991) (distinguishing constitutional conditions placed on uses of government funds by benefit recipients and unconstitutional conditions placed on recipients themselves); compare Rodney A. Smolla, The Reemergence of the Right-Privilege Distinction in Constitutional Law, 35 Stan. L. Rev. 69 (1982), with William H. Van Alstyne, The Demise of the Right-

The Senate Bill 650 limits are not voluntary because they provide only penalties for noncompliance rather than an incentive for voluntary compliance. Therefore the state's reliance on the dicta in footnote 65 of Buckley is misplaced.

In the hypothetical set out in footnote 65, a candidate agreeing to limit his or her expenditures receives the benefit of public funding. Candidates who do not so agree do not receive public funding, but are not penalized for their reliance on private funding. Under Senate Bill 650, however, a candidate agreeing to abide by the spending limits receives no benefit other than the state's blessing to seek the private funding he or she would be free to seek in any event. At the same time, candidates who do not agree to abide by the spending limits are penalized in two ways: (1) the state makes it unlawful to seek important sources of private funding that otherwise they would be free to seek; and (2) the state requires daily reporting of expenditures. These penalties make the limits coercive, not voluntary. The state, however, does not believe that it is withdrawing an otherwise available source of funding; it characterizes the availability of organizational funding as the incentive that it offers to candidates to agree to abide by the spending limits. We disagree with the state's characterization.

From the state's perspective, it is providing complying candidates with a substantial benefit by "allowing" PACs, political parties, labor unions, corporations, and other organizations to make campaign contributions. The state's argument, however, assumes that it properly could ban such organizations from making any

---

Privilege Distinction in Constitutional Law, 81 Harv. L. Rev. 1439 (1968).

contributions to candidates running for state office. This assumption is incorrect. We believe it is clear that a ban on campaign contributions by organizations would not survive a constitutional challenge. See, e.g., Federal Election Comm'n v. Massachusetts Citizens for Life, Inc., 479 U.S. 238, 263 (1986) (striking down federal limitation on use of corporate funds in connection with federal elections as applied to nonprofit corporation); Day v. Holahan, 34 F.3d at 1365-66 (invalidating Minnesota's $100 limit on contributions from individuals and PACs). We note that the Supreme Court has indicated that expenditure limits applied to organizations "impinge on protected associational freedoms" as well as freedom of speech. Buckley, 424 U.S. at 22. Thus the state's argument that it offers an incentive by allowing candidates to accept such contributions is disingenuous. Organizational contributions are constitutionally protected irrespective of any agreement by a candidate to abide by the state-imposed expenditure limits. No candidate would voluntarily agree to comply with the expenditure limits in exchange for access to sources of funding to which he or she already has a constitutional right of access. Rather, Senate Bill 650 forces compliance by imposing substantial penalties for non-compliance. The purported benefit is illusory, and the statute is coercive.

We therefore conclude that Senate Bill 650 "impose[s] direct and substantial restraints on the quantity of political speech," speech that is "at the core of . . . the First Amendment freedoms." Buckley, 424 U.S. at 39 (internal quotation marks and citation omitted); see also Day v. Holahan, 34 F.3d at 1360 (holding that limits on independent expenditures infringe protected speech). Even though the statute infringes protected speech, the statute nonetheless will be upheld "if the state can show that it is narrowly drawn to serve a compelling state interest." Day

v. Holahan, 34 F.3d at 1361; see also Austin, 494 U.S. at 657. In this case the state has failed to meet its burden.

First the state argues that the "over-arching state interest" served by Senate Bill 650 is the reduction of corruption and the appearance of corruption in the state's election process. State's Brief at 15. The state also refers to its related concerns with "the integrity of the [electoral] process," id. at 20, and public "confidence in the system of representative government," id. at 30 (quotation marks and citation omitted). While the state's interest in reducing corruption and its related concerns constitute a compelling state interest, the state has failed to explain how the campaign spending limits here in question are narrowly tailored to serve this interest or address these concerns. Indeed, we are hard-pressed to discern how the interests of good government could possibly be served by campaign expenditure laws that necessarily have the effect of limiting the quantity of political speech in which candidates for public office are allowed to engage. See Buckley, 424 U.S. at 55-57.

The state also argues that the expenditure limits are justified by its interests in (1) maintaining the individual citizen's participation in and responsibility for the conduct of government and (2) discouraging "the race toward hugely expensive campaigns, especially at the local level," State's Brief at 17-18. The state's interest in maintaining individual participation is what the District Court correctly described as an effort to "'level[] the playing field' between the rich and the poor." Shrink Missouri Gov't PAC, 892 F. Supp. at 1253. The Supreme Court in Buckley, however, specifically held that the government may not "restrict the speech of some elements of our society in order to enhance the relative voice of others," Buckley, 424 U.S. at 48-49, and no subsequent decision of the Court has undermined

that holding.[4] With respect to the state's interest in keeping down the costs of running for office, we note that the Buckley Court held that "the mere growth in the cost of . . . election campaigns in and of itself provides no basis for governmental restrictions on the quantity of campaign spending." Buckley, 424 U.S. at 57. This Court is not at liberty to disregard the explicit holdings of Buckley. We therefore hold that the state, having failed to show that the expenditure limits here at issue are narrowly drawn to serve a compelling state interest, has not justified the substantial burden that these limits place on speech that is at the core of the First Amendment.

Our analysis is not complete, however, because the state argues that the District Court should not have enjoined enforcement and implementation of sections 130.052 and 130.053 in their entirety. The state contends that several provisions can be implemented constitutionally despite the invalidity of the expenditure limits. These provisions include the requirement that candidates declare whether they will keep their expenditures within the unconstitutional limits, the unconstitutional limits themselves (described by the state for purposes of its severability argument as "the

---

[4]Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (1990), is not to the contrary. While the Supreme Court upheld Michigan's restriction on independent expenditures by corporations in support of or in opposition to candidates for state office, the Court did not overrule Buckley and "hinted" that its decision was limited by the fact that the restriction applied only to independent expenditures by corporate entities and did not apply to such expenditures by individuals. See Lillian R. BeVier, Campaign Finance Reform: Specious Arguments, Intractable Dilemmas, 94 Colum. L. Rev. 1258, 1270 (1994).

legislature's views as to the appropriate ceilings on expenditures," State's Brief at 30), and the disclosure requirements that are triggered by exceeding the unconstitutional limits. The state argues that these provisions should have been severed from the invalid parts of the statute. See Mo. Rev. Stat. § 1.140 (1994) (providing for general severability of all Missouri statutes).

The District Court did not address the severability of any remaining portions of Senate Bill 650 under Missouri law, see Kinley Corp. v. Iowa Utilities Board, 999 F.2d 354, 359 (8th Cir. 1993) (holding that questions regarding severability of state statutes are controlled by state law), but we think the proper response to the state's argument is clear: the remaining portions of sections 130.052 and 130.053 are not severable.

Once the unconstitutional portions of a statute are excised, the remainder can be upheld under Missouri law if it "is in all respects complete and susceptible of constitutional enforcement" and the court concludes that it would have been adopted even if it had been known that "the excluded portion was invalid." Millsap v. Quinn, 785 S.W.2d 82, 85 (Mo. 1990) (en banc). In Ryan v. Kirkpatrick, the Missouri Supreme Court left intact the remainder of the Campaign Finance Disclosure Law after invalidating one discrete provision. 669 S.W.2d 215, 219-20 (Mo. 1984) (en banc). That court held that the unconstitutional portions "are not so intertwined with [the law's] valid provisions as to leave it too enervated to stand." Id. In this case, the District Court did not invalidate all of Senate Bill 650; here the state asks us to leave intact portions of the very same discrete provisions that impose unconstitutional restraints on First Amendment rights. We cannot oblige the state. Every subsection of sections 130.052 and 130.053 makes some reference to the

expenditure limits that we have held unconstitutional. The invalid portions are inextricably intertwined with the remainder of the statute. Moreover, the statute provides that "[c]ampaign expenditures shall be limited pursuant to this section" and that "[t]o be in compliance with the expenditure limits . . ., the following expenditure limits . . . may not be exceeded by a candidate committee." Mo. Ann. Stat. § 130.052 (Vernon Supp. 1995) (emphasis added). The state proposes that we convert this mandatory language into a non-binding legislative recommendation. The legislature, however, did not enact a set of suggestions.

In sum, any remaining valid provisions of sections 130.052 and 130.053 are not complete and susceptible of constitutional enforcement and we cannot conclude that the legislature would have adopted them had it known the expenditure limits were unconstitutional. The District Court thus did not err when it enjoined the enforcement and implementation of sections 130.052 and 130.053 in their entirety.

C.

In Proposition A the citizens of Missouri adopted a measure designed to address the practice of carrying over "war chests" of campaign funds for future elections.[5] Under the ballot initiative measure, within ninety days of an election a candidate must turn over any excess funds, "except for an amount no greater than ten times the individual contribution limit" for the office sought, to the

---

[5]The legislature, in Senate Bill 650, earlier adopted a similar, but less restrictive, measure. See Mo. Ann. Stat. § 130.038 (Vernon Supp. 1995). Only the Proposition A "war chest" limitation is challenged in this case.

Missouri Ethics Commission or to contributors. Mo. Ann. Stat. § 130.130 (Vernon Supp. 1995). This is popularly known as a "spend-down provision" because candidates will most likely choose to spend all of their funds during the last days of the campaign rather than returning funds to contributors or turning them over to the state. The ability of a candidate to retain contributions for future elections is thus substantially limited.

The District Court held that the spend-down provision imposes a substantial burden on political speech by requiring that funds raised during a particular campaign be spent during the campaign. The court rejected the state's assumption that "blind support" in the form of a contribution that can be used in the current campaign or any future campaign "must constitute an impermissible attempt at improper quid pro quo influence." Shrink Missouri Gov't PAC, 892 F. Supp. at 1254. The state, on the other hand, argues that the spend-down provision does not limit speech but encourages it by requiring candidates "to do precisely what the contributors intend: to speak." State's Brief at 38. In our opinion, the state's argument makes an unwarranted assumption about the intention of campaign contributors and badly misrepresents reality. Some contributors undoubtedly do intend to give a candidate "blind support," and they do so without any hope of gaining improper influence with that candidate. Beyond that, we believe the state's characterization of the provision confirms the District Court's decision that it infringes the First Amendment. From the state's perspective, the provision is intended to require the candidate to speak in the current election. We note that "the right of freedom of thought protected by the First Amendment against state action includes both the right to speak freely and the right to refrain from speaking at all." Wooley v. Maynard, 430 U.S. 705, 714 (1977). From the appellees' perspective, the

provision limits the quantity of a candidate's speech in future elections. We note that this effect is identical to the effect of the expenditure limits addressed earlier in this opinion except that the impact of the provision is postponed to future elections. Whether we accept the state's or the appellees' characterization of the spend-down provision is irrelevant. Either way, we conclude that rights protected by the First Amendment are implicated and that the provision must be subjected to strict scrutiny.

While strict scrutiny may not always be fatal to a challenged restriction on speech, it is in this case. The state has not demonstrated that the spend-down provision is narrowly tailored to serve a compelling government interest. The state argues that this provision serves three interests.

> First, it attacks corruption and its appearance by (1) preventing the kinds of quids pro quo that occur when money is given to candidates in uncontested races, and (2) ensuring that the contributions limits of Proposition A . . . have a measurable effect on the political system . . . . Second, it preserves the integrity of the electoral process by (1) counterbalancing any discriminatory effects against challengers and in favor of incumbents that are created by Proposition A's contribution limits, (2) ensuring the opportunity of all citizens, not just those who have amassed large war chests in noncompetitive races, to participate in the political process as candidates, and (3) protecting the free speech interests of contributors. Third, it promotes speech and fairness, thus sustaining the active, alert

> responsibility of the individual citizen in our democracy.

State's Brief at 38-39 (citations omitted). At the outset, we note that any interest related to the effective operation of Proposition A's contribution limits fails to qualify as compelling because we have held that those limits are unconstitutional. See Carver v. Nixon, slip op. at 25. We further note that any interest defined by reference to funds raised in "noncompetitive" or "uncontested races" is unhelpful because the spend-down provision applies to funds raised in all campaigns; thus the provision is not narrowly tailored to serve such an interest. The sole remaining interests asserted by the state are that the provision "preserves the integrity of the electoral process by . . . protecting the free speech interests of contributors" and that it "promotes speech and fairness, thus sustaining the active, alert responsibility of the individual citizen in our democracy." Assuming that the state has articulated compelling interests, we conclude that the state has failed to demonstrate that the spend-down provision is narrowly tailored to do either of the things that the state asserts it will do. Although the state asserts that the provision protects the free speech interests of contributors, it is just as likely that the provision infringes those interests. Surely the contributor's political free speech interests are not well served if a candidate is compelled (1) to waste campaign contributions on unnecessary speech (in order to spend down the campaign's accumulated assets) or (2) to turn over those contributions to the Missouri Ethics Commission or return them to contributors. With respect to the provision's impact on the "active, alert responsibility of the individual citizen," the state's arguments are broad and conclusory. The state makes no attempt to show how the spend-down provision is narrowly tailored to serve that interest, saying only that "[c]itizens now may decline to participate in a

particular race . . . because of the overwhelming advantage carried over from another day" and that the "carryover restriction may well be the difference between having noncompetitive races, in which there is little or no speech, and having active campaigns in which there is uninhibited, robust, and wide-open debate on public issues," State's Brief at 45 (internal quotation marks and citation omitted). These statements fall far short of a showing that the spend-down provision is narrowly tailored to promote "the active, alert responsibility of the individual citizen in our democracy." We conclude that section 130.130 cannot withstand strict scrutiny and that it violates freedoms that the First Amendment protects.

III.

In sum, we hold that the expenditure limits of Senate Bill 650 and the spend-down provision of Proposition A restrict expression protected by the First Amendment and that the state has not demonstrated that these provisions are narrowly tailored to serve a compelling government interest. Furthermore, based on this Court's decision in Carver v. Nixon, slip op. at 25, which holds that Proposition A's contribution limits are facially unconstitutional, we conclude that those limits are necessarily unconstitutional insofar as they would limit contributions by candidates to their own campaigns. The judgment of the District Court enjoining the Attorney General of Missouri and the Chair of the Missouri Ethics Commission from implementing, enforcing, or acting in reliance on the challenged provisions is therefore affirmed.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS,
EIGHTH CIRCUIT

UNITED STATED DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SHRINK MISSOURI GOVERNMENT PAC, et al., Plaintiffs,	)	
vs.	)	No. 4:95CV815 CDP
JOHN MAUPIN, et al., Defendants.	)	

MEMORANDUM AND ORDER

This matter is before the Court on the parties' cross-motions for summary judgment. Plaintiffs' complaint seeks declaratory and injunctive relief enjoining defendants from enforcing certain portions of Missouri's recently effective campaign reform statutes, which plaintiffs contend violate the first amendment by impermissibly restricting political speech. The challenged provisions were contained in Senate Bill 650, which passed the state legislature in 1994 and became effective on January 1, 1995, and in Proposition A, which was passed by vote of the electorate on November 8, 1994, and which became effective that same day. Both Senate Bill 650 and Proposition A are "campaign reform" packages, in that they limit contributions, spending, and other actions that may be taken in political campaigns for Missouri elective offices.

The limits on campaign contributions contained in Proposition A have been upheld by the United States District Court for the Western District of Missouri, in

Carver v. Nixon, 882 F. Supp. 901 (W.D. Mo. 1995), and those contribution limits are not in issue in this suit. Instead, Plaintiffs challenge the spending limits contained in Senate Bill 650, the Proposition A limits on amounts a candidate may carry over from one election to the next, the application of Proposition A's contribution limits to a candidate's own money, and a provision of Senate Bill 650 that requires certain campaign advertisements to state that they are approved and authorized by the candidate.

Plaintiff Shrink Missouri Government PAC is a Missouri political action committee. Plaintiff W. Bevis Schock is a Missouri citizen who ran, unsuccessfully, for the Republican nomination for United States Congress in the 1992 primary. Plaintiff Frederick T. Dyer previously served in both the Missouri House of Representatives and Missouri Senate, and was defeated in his bid for reelection to the Missouri Senate in 1994. Both individual plaintiffs state that they wish to run for office in the future and that it wishes to continue to contribute to candidates for Missouri office in the future.

Defendants are John Maupin, sued in his official capacity as Chair of the Missouri Ethics Commission, and Jeremiah W. Nixon, sued in his official capacity as Missouri Attorney General. The Missouri Ethics Commission has certain statutory duties involved with enforcement of Missouri campaign laws, including collection of campaign financial reports and referral of campaign finance and reporting violations for criminal prosecution.

On May 10, 1995, the undersigned entered a Temporary Restraining Order enjoining defendants from enforcing the challenged statutes, and that TRO was later converted to a preliminary injunction. The parties jointly

proposed that this case be resolved on cross-motions for summary judgment rather than through trial.

I. General Principles

In determining whether summary judgment should issue, the facts and inferences from these facts are viewed in the light most favorable to the non-moving party and the burden is placed on the moving party to establish both the absence of a genuine issue of material fact and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Once the moving party as met this burden, however, the non-moving party may not rest on the allegations in its pleadings but by affidavit and other evidence must set forth specific facts showing that a genuine issue of material fact exists. Fed. R. Civ. P. 56(e). Although some factual evidence has been presented here, the issues presented are largely ones of law, and there are no genuine factual issues requiring resolution. Thus, decision on summary judgment is appropriate.

In their motion for summary judgment, plaintiffs argue that all the provisions violate the first amendment and must be enjoined. Defendants argue that the regulations are not content based,[1] and therefore need only a rational basis

---

[1]Actually, defendants state that they are not arguing this position because the Court stated, in its order granting preliminary relief, that the restrictions are content based. Defendants assert that absent that statement, they would be arguing that the restrictions are content neutral. The Court does not understand why a defendant would so readily abandon a position it

to be held constitutional, and, alternatively, that all the provisions withstand strict scrutiny in any event, so that none of them violate the first amendment.

In Buckley v. Valeo, 424 U.S. 1 (1976), the Supreme Court established the framework for first amendment analysis of financial and disclosure limitations on political campaigns. Buckley upheld the contribution limits at issue in that case, while finding that limits on independent expenditures, restrictions on a candidate's own spending, and limits on overall campaign spending violated the first amendment. The Supreme Court in Buckley upheld other portions of the law before it, including a public financing scheme for presidential campaigns that was tied to voluntary spending limits. The application of Buckley and its progeny to the facts of this case determines whether Missouri's campaign reforms are constitutional. Under Buckley, content-based regulations are subject to strict scrutiny.

The test for whether a regulation is content neutral or content based is the "commonsense" determination of whether "the message conveyed determines whether the speech is subject to regulation." See Whitton v. City of Gladstone, 54 F.3d 1400 (8th Cir. 1995), citing City of Cincinnati v. Discovery Network, Inc., 113 S.Ct. 1505, 1506-17 (1993). Here, all the challenged regulations by definition apply only to political speech. The spending and contribution limits apply only to contributions or expenditures made for the purpose of advocating the election or defeat of a particular candidate. As the Eighth

---

purportedly deems correct when no final determinations have been made and no final relief has been granted, and therefore will consider that defendants, in fact, are still urging this position.

Circuit stated in Day v. Holahan, 34 F.3d 1356, 1361 (8th Cir. 1994), cert. denied, 115 S. Ct. 936 (1995), ". . . expenditures of any other nature, supporting the expression of any sentiment other than advocating the defeat of one candidate or the election of another, do not trigger" the restrictions. The provisions apply only to political speech, and not to any other speech. They are, therefore, content based. Additionally, the provision requiring only literature which makes statements about another candidate to carry the "approved and authorized" wording (§ 130.031.12, R.S.Mo.) is explicitly content based. See also McIntyre v. Ohio Election Commission, 115 S. Ct. 1511, 1518 (1995).

In McIntyre, the Supreme Court stated: "When a law burdens core political speech, we apply 'exacting scrutiny,' and we uphold the restriction only if it is narrowly tailored to serve an overriding state interest." 115 S. Ct. at 1519, citing First Nat'l Bank v. Bellotti, 435 U.S. 765, 786 (1978). Thus, this Court must apply "the most exacting scrutiny" to the statutes now before it. See also Turner Broadcasting System v. Federal Communications Corporation, 114 S. Ct. 2445, 2459 (1994).

Although defendants have argued a number of potential justifications for the laws at issue here, they have not provided any evidence that either the state legislature or the electorate actually considered those justifications in enacting Senate Bill 650 or Proposition A. Plaintiffs urge that "after-the-fact rationalizations" cannot be sufficient to withstand strict scrutiny, and that defendants must "demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way." United States v. National Treasury Employees Union, 115 S.Ct. 1003, 1017 (1995), citing Turner Broadcasting System, 114 S.Ct at 2470.

Plaintiffs presented affidavits to the effect that they desire and need to violate the provisions to run effective campaigns or to effectively support the candidates of their choice. Defendants, on their initial motion for summary judgment, presented no evidence by way of affidavit or otherwise. Defendants' brief in opposition to plaintiffs' motion for summary judgment, however, attached certain exhibits. Defendant's exhibits do nothing to prove or disprove either defendants' or plaintiffs' case. There is no evidence provided that the legislature or the electorate actually considered or even had available the reports provided. None of the evidence presented gives rise to any genuine dispute of a material fact.

If plaintiffs are correct in their contention that the state must prove that the legislature and the electorate explicitly considered the specific wrongs now claimed to be remedied by the statutes, either by including "findings" in the laws themselves or by, for example, presenting evidence of legislative history or testimony about the intent of the electorate or of the legislature, then defendants clearly have not met that burden. The Court does not agree, however, that Supreme Court precedent requires that type of specific, historical factual proof. States such as Missouri, where the legislature does not collect or preserve legislative history, could never meet the burden plaintiffs urge. Thus, the undersigned will give the state the benefit of the doubt, and will assume, without finding, that in fact the justifications offered are the reasons for the passage of the laws.

The State asserts that four closely-related interests justify the statutory scheme at issue here: (1) preserving election integrity, (2) preventing corruption, (3) preventing false statements, and (4) promoting individual participation in the election process.

That states possess compelling interest in protecting the integrity of the electoral process and preventing corruption in the political process was recognized by Buckley v. Valeo, 424 U.S. 1 (1976). Similarly, in First Nat'l Bank v. Bellotti, 435 U.S. 765, 788-89 (1978), the Court recognized the state's interest in "preserving the integrity of the electoral process, preventing corruption, and sustaining the active, alert responsibility of the individual citizen in a democracy for the wise conduct of government." Defendants argue that Missouri wishes to "encourag[e] and allow[ ] all citizens to participate in electoral politics", and that "the states do have an interest in protecting the free speech and election rights of all their citizens, to prevent their being trampled upon by the wealth that can be amassed by a few." As political or policy goals these statements cannot be seriously argued with. When the state's promotion of such goals interferes with political speech, however, these public policies must represent compelling needs, and the statutory scheme must be closely tailored to address those needs.

II. The Statutes at Issue

Plaintiffs' complaint alleges that four types of campaign restrictions violate their first amendment rights. The challenged provisions are[2]:

1. Provisions that limit the amount of money a candidate for public office may contribute to his or her own

---

[2]For ease of reference, the Court uses the numbers assigned to these provisions for their inclusion in the Revised Statutes of Missouri, even though Proposition A has not actually been printed in that official code yet. Both Proposition A and Senate Bill 650 may be found in the unofficial annotated statutes, V.A.M.S., at Ch. 130.

campaign. This restriction results from the interplay of the pre-existing definition of "contribution" contained in § 130.011(12)(a), and the limits on contributions contained in § 130.100 (Prop. A).

2. Section 130.130 (Prop. A), which requires that campaign funds in excess of expenditures made for any particular election must be returned to contributors or forfeited to the Missouri Ethics Commission.

3. Provisions that require a candidate to comply with spending limits or face one of two alternatives: not accept contributions from anyone other than individuals and file daily expenditure reports once expenditures exceed the limits (§ 130.052 of SB 650), or pay a "surcharge" to the Missouri Ethics Commission on amounts spent that exceed the limits (§ 130.053 of SB 650).

4. Subsection 12 of § 130.031 (SB 650), which requires certain types of campaign literature to contain a statement that the literature was "approved and authorized" by the candidate.

A. Candidates' Own Funds

The basic Proposition A limits on contributions contained in § 130.100 were recently upheld in Carver v. Nixon, 882 F. Supp. 901 (W.D. Mo. 1995). The parties to that case did not argue that Proposition A limited the amounts that a candidate could contribute of his or her own money to a campaign. In other words, in that case the Western District court simply upheld the limitations on contributions that persons other than the candidate could give to the candidate. In doing so, Judge Clark stated

> It is true that Proposition A does not limit the amount of personal funds a candidate may contribute to his or her own campaign and it does not limit contributors in their own personal direct expenditures made in promotion of a candidate. These types of limits are not at issue in this case. However, the Court notes that such limits on the candidate and on contributors would directly restrict the candidate's and contributors' own political speech and would run afoul of the protections of the First Amendment, while the limits on contributions at issue here only limit indirect speech of the contributor.

Carver, 882 F. Supp. at 906 (emphasis added). Defendants argue that this statement is a holding that the law does not limit the amount a candidate may spend of his or her own money. As Judge Clark stated, the issue was not before him, and it clearly is before the undersigned. Defendants neither consent to plaintiffs' requested injunction nor concede that Judge Clark's interpretation is correct, but simply state in their motion for summary judgment (for apparently the first time), that they would not argue the issue in this case. The issue has been properly presented in this case and is appropriate for determination on the cross-motions for summary judgment.

Section 130.011(12)(a), R.S.Mo., defines contribution to include "A candidate's own money or property used in support of his candidacy other than expense of his food, lodging, travel, and payment of any fee necessary to the filing for public office." This definition existed before Senate Bill 650 and Proposition A were passed, and nothing in Proposition A attempted to change or modify the pre-existing definition of contribution. The

commonsense reading of the statute, therefore, provides that the Proposition A contribution limits upheld in Carver also apply to contributions or direct expenditures made by a candidate with his or her own money.

As Buckley held, and as Judge Clark recognized in Carver, such a restriction is clearly unconstitutional, as it limits a candidate's own direct personal speech, by limiting the amount of a person's own funds that he or she can spend in support of his or her own candidacy. There can be no compelling state justification for this direct limitation on a candidate's own political speech, and the defendants here have made no attempt to provide any justification. When the definition is applied to the contribution limits that have been previously upheld, it impermissibly interferes with a candidate's first amendment rights, and is unconstitutional. Therefore, plaintiffs are entitled to the injunction they seek preventing defendants from applying the definition in § 130.011(12)(a) to the contribution limits of § 130.100 of Proposition A.

B. Spending Limits

Senate Bill 650 established spending limits for campaigns for all state elected offices in Missouri. The limits vary depending on the office sought. The parties argue about whether these limits are voluntary or coercive. Under § 130.052.1, when a candidate files for office he or she must file an affidavit stating whether or not the candidate agrees to abide by the campaign spending limits established by the statute.[3] If a candidate files an affidavit refusing to comply with the limits, then that candidate may only accept contributions from individuals. The non-

---

[3]If that candidate's opponent later elects not to comply, the candidate may reconsider the declaration.

complying candidate may not accept contributions from PACs, parties, corporations, labor unions, or other candidates' committees, although a candidate who files an affidavit of intent to comply with the spending limits may accept such contributions. § 130.052.3. Additionally, a candidate who elects not to comply must, as soon as the spending limits are exceeded, file daily disclosure reports with the ethics commission. § 130.052.3. Any candidate who agrees to comply with the limits and then exceeds them must pay a "surcharge" to the ethics commission: the surcharge is a sliding percentage of the amount by which the limits were exceeded, ranging from twenty five percent of the overage to one hundred percent. See § 130.053.

Defendants here argue that these spending limits are voluntary ceilings and are therefore constitutionally permissible. Defendants argue that the statutory scheme merely provides incentives for complying with the campaign spending limits, while plaintiffs argue that the consequences of exceeding the limits or not agreeing to them are so Draconian that the limits are not voluntary.

Buckley v. Valeo upheld voluntary spending limits only where the reward for adhering to the limits was the receipt of public campaign financing. In Vote Choice, Inc. v. DiStefano, 4 F.3d 26 (1st Cir. 1993), the First Circuit upheld a spending limits scheme that was found to be voluntary, but noted that "there is a point at which regulatory incentives stray beyond the pale, creating disparities so profound that they become impermissibly coercive." Id. 4 F.3d at 38. The Eighth Circuit recently found certain spending limits unconstitutional even where they were tied to a public financing scheme. Day v. Holahan, 34 F.3d 1356 (8th Cir. 1994).

In finding the bulk of the spending limits before it in Buckley unconstitutional, the Supreme Court noted that: "It is clear that a primary effect of these expenditure limitations is to restrict the quantity of campaign speech by individuals, groups, and candidates." There is no doubt that the spending limits at issue here also clearly restrict the quantity of political speech. Like the limits overturned in Buckley, the limits here do not promote the State's interest in preventing quid pro quo corruption, because the limits apply only to expenditures made by a candidate or his committee. Persons wishing to exert corrupt influence over a candidate could still spend money on behalf of a candidate's party or in favor of issues closely identified with a candidate, without coming within the limits. Cf. Buckley, 424 U.S. at 45.

The Missouri spending limits contained in Senate Bill 650, unlike those in the cases relied on by defendants, are not tied in any way to public campaign funding, and Missouri provides no matching or public funds to any candidates. Cf., Day v. Holahan, supra; Wilkinson v. Jones, 876 F. Supp. 916, 927 (W.D. Ky. 1995) (Kentucky has compelling interest in encouraging candidates to accept public financing). Instead, the types of entities who can contribute to the candidates is limited if the spending limits are not followed, but unlimited if they are. The Court agrees with plaintiffs that the statutory scheme is coercive, because it withdraws an important source of private campaign funding otherwise available to candidates, but provides no method, such as public funding, of replacing that forfeited funding. Buckley's rationale for upholding spending limits in return for public financing was not based solely on the fact that the limits were voluntary: it was also based on the fact that encouraging use of public financing supported the goal of reducing corruption or the appearance of corruption, and that, of course, public financing of

campaigns promotes, rather than restricts, political speech. Missouri's scheme has no such saving grace. The disparities created by the statutory scheme are so profound that they must be viewed as coercive. Similarly, the requirement to file daily reports once the spending limits are exceeded also provides only a penalty.

Defendants' briefs decry the large increase in campaign spending, and assert that the citizens and legislature recognized a legitimate interest in slowing or halting the increasing costs of political campaigns. Buckley specifically held that the mere growth in the cost of election campaigns in itself provides no basis for restrictions on the quantity of campaign spending. Id. at 57. Defendants argue that times have changed since Buckley, because now the amounts spent on campaigns are even higher than anyone could have anticipated at the time of Buckley. This is a distinction without a difference, and defendants have failed to show that the increase in total dollars spent on campaigns somehow automatically increases corruption or decreases electoral integrity.

Defendants also argue that the state's interest in promoting individual participation in the electoral process is directly related to the total expenditures of an election, and that reducing the power of the wealthy to influence the electoral process is a legitimate goal. First, the contribution limits upheld in Carver appear to go a long way to promote this goal, and it is not at all clear that the spending limits add much, if anything, to this, except to the extent they apply to a candidate's own money. Buckley, of course, clearly prohibited any limits on a person's ability to spend his or her own money on his or her own campaign, and defendants have provided no rationale for why the world has changed since Buckley in this respect. Defendants' argument that the State has a compelling interest in

"sustaining individual participation in the election process", as defendants' brief explains this interest, runs afoul of Buckley's holding that a government may not restrict the free speech rights of some elements of society in order to enhance the relative voices of others. The idea that "leveling the playing field" between the rich and the poor is a compelling justification for interference with core political speech has never been accepted by any court.

Defendants rely on the white primary and poll tax cases to construct an argument that, in today's political climate, the only way to protect the value of one person's individual vote is to limit total campaign spending. These cases, and their concern that the state not burden political speech, do not support defendants' arguments. The spending limits here do nothing to increase the power of a single voter. To the extent the state has any legitimate interest in equalizing the roles of all its voters, the contribution limits upheld in Carver promote that goal. The spending limits here clearly violate the rule of Buckley, and cannot withstand strict scrutiny.

C. The "Spend down" Provision

Proposition A provides, in § 130.130, that:

> Within ninety days of the election to fill the office for which the candidate has filed or declared, said candidate and that candidate's campaign committee shall either
> (a) Turn over to the state of Missouri for the benefit of the Missouri Ethics Commission, or
> (b) Return to those persons reported as contributors to the candidate's campaign,

> any balance of campaign funds in excess of expenses incurred for the campaign, except for an amount no greater than ten times the individual contribution limit set forth above for that particular office.

Thus, Proposition A does not allow for carryover from one campaign to the next of any but very small amounts of campaign funds.[4]

Defendants argue that this provision does not restrict speech, but really encourages speech, by making candidates for public office use the funds they have raised for the purposes for which they were raised -- the particular election and office of the current campaign. Defendants assert that this provision gives the candidate two choices: increase his or her political speech by spending all the raised funds, or give those funds back to the contributors, who can then re-give the money (and, therefore, speak again) during the next campaign.[5] Defendants assert that

---

[4]Senate Bill 650 contained a similar provision, but the SB 650 version allows a longer time period for the return and allows the candidates or their committees to keep a significantly larger amount of excess funds. See § 130.038.

[5]Defendants assert that no candidate will ever turn the money over to the ethics commission, but instead will always give it back to contributors, who can then give it back in the next campaign. The statute does not provide any method for deciding which contributors receive refunds, and defendants' argument assumes that a candidate will select among the contributors to determine who should receive a refund, rather than attempting to

this provision protects the integrity of the election process because it forces candidates to use the funds for the purposes intended by the contributors (the particular election), rather than for amassing a war chest for future campaigns. Defendants further argue that the carryover restrictions prevent quid pro quo corruption through unchallenged incumbents' amassing large war chests, and that it levels the playing field between rich and poor and between challengers and incumbents.

The parties have cited only one case dealing with a provision in any way similar to that here. In Service Employees International Union v. Fair Political Practices Commission, 721 F.Supp 1172 (E.D. Cal. 1989), aff'd 955 F.2d 1312 (9th Cir. 1992), cert. denied 112 S. Ct. 3056 (1992), the California District Court found a somewhat similar "war chest" restriction unconstitutional. The California proposition provided that any campaign funds raised before January of 1989 could be used only for purposes other than to support or oppose a candidate for elective office. The court found that the provision had no effect on potential corruption in the political process and that the goal of levelling the playing field between rich and poor candidates was invalid, and concluded that the provision violated the first amendment. The undersigned must reluctantly agree that the Proposition A provision at issue here meets the same fate.

The "spend down" limits clearly limit political speech by telling a candidate when he or she must speak, that is, by stating that the money must be spent in the particular campaign in which it was raised. Defendants assume that contributors always wish to contribute to a candidate for a particular campaign, and that a general

---

refund the contributions in some pro-rata manner.

contribution to a candidate, which that candidate could use for current or future campaigns, must constitute an impermissible attempt at improper quid pro quo influence. The Court disagrees, and thinks that it is entirely legitimate for a contributor to give money to a candidate because the contributor supports that candidate, in whatever race the candidate may later choose to run. This type of "blind support" does not necessarily imply that the contributor expects favors, but rather that the contributor supports the candidate because of the candidate's particular views or politics -- the very essence of protected political speech. The dangers of quid pro quo corruption are adequately addressed by the overall contribution limits that were upheld in Carver: the spend down limits do nothing to further the goal of preventing corruption.

It seems clear that the desire to limit the power of incumbency may be the real goal of the spend-down requirement, but the provision would only benefit incumbents who had not faced serious competition in past elections; it does nothing to limit the power of incumbents who face tough elections in each race and therefore presumably cannot amass large war chests. Thus, even if limiting the power of incumbency were a compelling interest (which Buckley appears to deny), this provision is not narrowly tailored to serve that interest. Additionally, as set forth above, to the extent the provision is justified because it "equalizes" the spending power of rich and poor, it runs afoul of Buckley's clear statement that that is not a compelling justification for interference with first amendment rights.

D. The "Approved and Authorized" Requirements

Senate Bill 650 added subsection 12 to § 130.031. That subsection provides that:

> . . . any printed or broadcast matter . . . which contains allegations regarding the actions, inactions, beliefs, behavior or other aspects of any candidate for office, other than the candidate or candidate committee which issued such printed or broadcast matter, shall contain . . . a statement that . . . the information contained in the advertisement has been approved by the candidate on whose behalf the printed or broadcast matter was issued. Such statement shall be in the following form: "The contents of this advertisement have been approved and authorized by . . ." [the candidate on whose behalf the advertizement was issued].

A violation of this statute is a misdemeanor. See § 130.081. Even before the passage of SB 650, § 130.031 contained requirements that all print or broadcast matter relating to candidates or ballot issues contain a "paid for by" legend identifying the source of the matter. See § 130.031.8 and 9. Plaintiffs here are not challenging that "paid for by" requirement.[6]

In McIntyre v. Ohio Election Commission, 115 S. Ct. 1511 (1995), the Supreme Court held that an Ohio

---

[6]Defendants argue that this failure indicates the invalidity of plaintiffs' challenge to the other provisions. The Court agrees that McIntyre calls into question the "paid for by" requirement, but that issue is not before the Court. Plaintiffs are not required to challenge all potentially unconstitutional provisions.

statute that prohibited the distribution of anonymous campaign literature violated the first amendment. The Court found that the State of Ohio could not justify its prohibition of anonymous handbills based on an interest in preventing fraud or libel or an interest in providing the electorate with relevant information. The Court noted that the Ohio statute would reach handbills that were not even arguably false or misleading and that if false or misleading advertisements were truly the target of the statute, it should have been more narrowly tailored to reach only those advertisements. Additionally, the Court found that the "simple interest in providing voters with additional relevant information does not justify a state requirement that a writer make statements or disclosures she would otherwise omit." McIntyre, 115 S. Ct. at 1520.

There can be no doubt that the Missouri provision requires a speaker to "make statements or disclosures she would otherwise omit." The defendants argue that the Missouri statute at issue here is narrowly tailored to achieve a compelling state interest in deterring false statements by candidates for public office and making those candidates accountable for materials put out by their campaigns. The undersigned agrees with defendants that the State may legitimately wish to protect the public from the evil hypothesized, specifically, that a candidate's campaign committee might make false statements about an opponent, which the candidate could then deny having approved. However, the Court finds that the State has failed to show either that this desire rises to the level of a compelling need or that this statute is narrowly tailored to meet that need. There has been absolutely no showing by the State that false advertising by campaign committees is a major electoral problem. The statue by its terms applies only to statements made by a candidate or a candidate's campaign committee. It does not apply to statements made by

political action committees, industry lobbyists, "public interest" groups or others, anonymous or named, which are surely the source of most "deniable" negative campaigning. The State has provided no evidence of even a single instance where a campaign committee made a false statement which the candidate later disavowed. Nor has the state provided any evidence of an increase in false advertising or fraud in its political elections. It has simply decried "negative campaigning", in general, and while the Court might agree that negative campaigning is distasteful, that is not a sufficient basis for interfering with core first amendment rights.

Moreover, like the Ohio statute involved in McIntyre, and like the earlier California ordinance invalidated in Talley v. California, 362 U.S. 60 (1960), this statute "contains no language limiting its application to fraudulent, false, or libelous statements. McIntyre, 115 S. Ct at 1517. To the extent Missouri seeks to justify this regulation as a means of preventing fraud and false statements, it must fail for the same reason that the Ohio statute did. As in McIntyre, this provision applies "even when there is no hint of falsity or libel." Id.

Defendants argue that, unlike the Ohio statute in McIntyre, the Missouri statute applies only to elections of public officers, and not to ballot issues. Although Missouri's statute is admittedly narrower than Ohio's, the undersigned can find no constitutional significance in this distinction, as the provision still is not narrowly tailored to meet the need. The State also argues that McIntyre is distinguishable because the Missouri statute does not apply to anonymous advertisements at all, because Missouri candidates are already required to include a statement that the material was paid for by whatever campaign committee or candidate actually paid for the advertisement. It seems

that to whatever extent the state wishes to impose accountability and lessen the opportunity for deniability, the "paid for by" requirement promotes that goal, without the need for the added "approved and authorized" language. Although Missouri, unlike Ohio, has no other specific prohibition on false statements made during political campaigns, Missouri common law recognizes the torts of defamation and fraud, and those doctrines are not abrogated merely because a political campaign is involved. In any event, if this statute is Missouri's "first line of defense" against fraud and false statements in political campaigns, it is unlikely to promote those goals. Thus, the Court must conclude under McIntyre that the burden imposed on political speech by the "approved and authorized" language does not withstand strict scrutiny. The statute violates the first amendment and the Court will enter the injunctive relief requested.

III. Conclusion

The patchwork of Missouri campaign reforms passed in 1994 indicates a strong desire by the legislature and the public to bring some limits to the increasingly costly and negative world of political campaigns. No one could seriously disagree, as a policy matter, that negative campaigning does not benefit the public discourse and that expenditures of unlimited amounts of money on political campaigns is not a sensible use of society's resources. That defendants, the state legislature, and a majority of the electorate may agree with those policy statements, however, does not entitle the state to interfere with the first amendment rights of persons such as plaintiffs. Buckley established very clear rules regarding what justifications may be sufficient for interference with core political speech, and the Missouri statutory scheme falls far short of meeting those tests. There are no genuine disputes of material fact

remaining in this case, and plaintiffs are entitled to the permanent injunctive relieve which they seek.

Accordingly,

IT IS HEREBY ORDERED that plaintiffs' motion for summary judgment [#19] is **GRANTED** and defendants' motion for summary judgment [#18] is **DENIED**.

A separate Judgment in accordance with this memorandum and order is entered this same date.

CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 7th day of July, 1995.

UNITED STATED DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SHRINK MISSOURI GOVERNMENT PAC, et al.,	)	
Plaintiffs,	)	
v.	)	Case No. 4:95CV815CDP
JOHN MAUPIN, et al.,	)	
Defendants.	)	

JUDGMENT

In accordance with the memorandum and order entered this same date,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that plaintiffs shall have summary judgment against defendants, and that defendants, their successors, agents and employees, are **PERMANENTLY ENJOINED and RESTRAINED** from the following:

1. Implementing, enforcing or acting in reliance upon § 130.130 of Proposition A and § 130.052, § 130.053, and § 130.031.12, R.S.Mo. (1995).

2. Applying the definition of "contribution" contained in § 130.011(12)(a), R.S.Mo., to the contribution limits contained in § 130.100 of Proposition A, that is, applying or enforcing the statute so that candidates for office would be limited in the amounts they may personally contribute to or spend on behalf of their own campaigns.

CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 7th day of July, 1995

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of the United States. Amendment I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Section 130.052. Revised Statutes of Missouri:

Candidate to file affidavit, procedure--compliance with voluntary expenditure limits, release--failure to comply, restrictions--expenditures, how calculated, limits--certain offices.

1. Campaign expenditures shall be limited pursuant to this section. Each candidate date for elective office shall file an affidavit with the secretary of state, at the same time such candidate files for office, stating whether or not the candidate agrees to abide by the campaign expenditure limits established pursuant to this section. Copies of the affidavit may be used by the candidates to inform the public of a candidate's intent of compliance or noncompliance with the expenditure limits so established. The secretary of state shall forward the affidavits to the ethics commission for administration of the expenditure limitation provisions of this chapter.

2. A candidate who has agreed to abide by the voluntary expenditure limits who has as an opponent on the ballot in the next election who has refused to comply with the voluntary expenditure limits by the date of filing for the

office shall have five business days after the closing date of filing for office to decide whether to comply with the expenditure limits or not, and if the candidate decides not to comply, the candidate shall be released from the voluntary expenditure limits and surcharges established in this chapter. If a successful primary electoral candidate has not agreed to abide by the voluntary limits, any candidate who has agreed shall have five days following the primary to reject the agreement and be released from the expenditure limits and surcharges established in this chapter.

3. Any candidate who has filed an affidavit refusing to comply with the expenditure limits established in this chapter shall be prohibited from accepting contributions from any source other than individuals, and such contributions from individuals shall be limited to the applicable contribution limits established in section 130.032. In the event the candidate receives a contribution from any other source other than individuals or receives an individual contribution greater than the allowable limit, the candidate shall have ten business days to return the contribution, or the contribution shall escheat to the state. No candidate found to have purposely violated this subsection shall take office. In addition a candidate who refused to comply with the expenditure limits and exceeds such limits shall be required to file daily disclosure reports with the ethics commission beginning with the first notice from the commission that such candidate has exceeded the allowable expenditure limit.

4. For the purposes of this section, the expenditure limit shall be the aggregate total of all expenditures made which are reported pursuant to sections 130.041 and 130.051, beginning with the opening of filing and continuing to the primary election day and beginning

with the day after the primary election and continuing to the general election day, except any expenditure made for accounting or bookkeeping services necessary for compliance with the expenditure limit and campaign disclosures shall not count toward the expenditure limits.

5. Any expenditure made for broadcast or print media advertisement shall be deemed to have been expended at the time the advertisement appears in print or is broadcast and shall be credited toward the expenditure limit allowed at such time.

6. Any purchases or expenditures for printed campaign material, campaign media, campaign consultants, campaign employees or campaign materials which are prepaid before the filing date and which would be distributed or used during the periods defined in subsection 4 of this section shall be included in the amounts allowed in this section. The candidate shall report all such purchases or expenditures to the commission by the date of filing for the office to which election is sought.

7. Each chamber of the general assembly shall adopt rules governing the appropriate use of materials printed at the state's expense, and further provide that those materials not be used in conjunction with election activities. The ethics commission shall review complaints alleging violations of this subsection as provided in section 130.054.

8. To be in compliance with the expenditure limits established pursuant to this section, the following expenditure limits per election may not be exceeded by a candidate committee:

(1) Thirty thousand dollars for candidates for the office of state representative;

(2) One hundred thousand dollars for candidates for the office of state senator;

(3) Seven hundred fifty thousand dollars for candidates for the office of lieutenant governor, secretary of state, state treasurer, attorney general and state auditor;

(4) One million five hundred thousand dollars for candidates for the office of governor;

(5) Thirty thousand dollars for any office of an electoral district, ward or other unit if the population of such electoral district, ward or other unit according to the latest decennial census is under one hundred thousand in population, except that the expenditure limit under this subsection for a candidate committee where the election is for any office of a city with a population of at least fifty thousand inhabitants and the city charter of such city requires that the election shall be a nonpartisan election with no primary election shall be sixty thousand dollars;

(6) One hundred thousand dollars for an office of an electoral district, ward or other unit if the population of such electoral district, ward or other unit according to the latest decennial census is at least one hundred thousand but less than two hundred fifty thousand in population; and

(7) Five hundred thousand dollars for an office of an electoral district, ward or other unit if the population of such electoral district, ward or other unit according to the latest decennial census is at least two hundred fifty thousand in population.

Section 130.053, Revised Statutes of Missouri:

Candidates subject to a surcharge on excess expenditures, when, amount--ethics commission to collect debt.

1. Each candidate for office who has filed an affidavit agreeing to comply with the expenditure limits shall be subject to a surcharge on all expenditures made in any election which exceed the expenditure limits established in section 130.052. The expenditure reports required by this chapter shall be examined by the ethics commission, and where expenditures are made which exceed the limits, the commission shall notify the candidate of the excess amount. The candidate shall, within thirty days of receiving such notice, remit to the ethics commission the following amounts:

(1) Twenty-five percent of the excess expenditures if the expenditures are between zero and five percent over the prescribed limit;

(2) Fifty percent of the excess expenditures if the expenditures are more than five but not greater than ten percent over the prescribed limit;

(3) Seventy-five percent of the excess expenditures if the expenditures are more than ten but not greater than fifteen percent over the prescribed limit; and

(4) One hundred percent of the excess expenditures if the expenditures are greater than fifteen percent of the prescribed limit.

2. The commission shall transmit all proceeds received pursuant to this section to the director of revenue for deposit in the general revenue fund of the state treasury. The commission shall send a receipt to each candidate

which remits payment of surcharges pursuant to this section.

3. No candidate shall take office until payment is made of the surcharges. Any candidate and any other person owing a surcharge shall be personally liable for the payment of the surcharge. The commission shall pursue all necessary means to collect the debt from the candidate or any other person liable. The debt shall constitute a debt owed to the state and be enforceable as provided by law, including but not limited to chapter 143, RSMo.

Section 130.130. Revised Statutes of Missouri:

Excess Campaign Contributions: Within ninety days of the election to fill the office for which the candidate has filed or declared, said candidate and that candidate's campaign committee shall either;

(a) Turn over to the state of Missouri for the benefit of the Missouri Ethics Commission, or

(b) Return to those persons reported as contributors to the candidate's campaign, any balance of campaign funds in excess of expenses incurred for the campaign. Except for an amount no greater than ten times the individual contribution limit set forth above for that particular office.